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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/686,878	10/16/2003	Yu-Cheng Hsu	TUC920030050US1	7388
45216	7590	11/27/2007		
Kunzler & McKenzie 8 EAST BROADWAY SUITE 600 SALT LAKE CITY, UT 84111			EXAMINER JOHNSON, CARLTON	
			ART UNIT 2136	PAPER NUMBER
			MAIL DATE 11/27/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/686,878

Applicant(s)

HSU ET AL.

Examiner

Carlton V. Johnson

Art Unit

2136

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 07 August 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1,3-8,10-22 and 24-30.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

Continuation of 11. does NOT place the application in condition for allowance because: Response to Remarks

The claims have not introduced any new matter therefore the current grounds of rejection can be used to reject all claims limitations. Five definitions were selected at random which define "what is involved in a reboot procedure". Four of the definitions indicate that a power-off and power-on sequence can be completed within a reboot procedure. Only one definition indicates that a reboot procedure specifically does not complete a power-off and power-on sequence. This investigation indicated that 4 out of 5 definitions for a reboot procedure do not support applicant's remarks for a reboot procedure. Applicant can't pick the one definition that fits applicant's specification and indicate that this is what is well known in the art. This investigation indicates the exact opposite. What is well known in the art is that a reboot procedure can include a power-off and power-on sequence.

In addition, during the reboot, volatile memory is reconfigured with the new processes (namely the data transfer kernel). This memory reconfiguration effectively wipes out previously stored information (at least a portion of the information) within volatile memory. The specification designates marked and unmarked data can be eligible for saving but marked and unmarked data may be overwritten by the reboot process.

The situation in question is that the specification does not specify what the definition of a reboot is. If the specification defined the term reboot it would be much better. But, I could find no definition for a reboot within the specification.

Applicant's principal argument is the capability to reboot a computer system and place a special data save kernel (core executable) into execution at reboot completion and save the contents of volatile memory. This particular sequence of events raises an enablement issue and requires a USC 112 rejection. Applicant uses the term "reboot" multiple times within the specification with no definition of the term. Therefore, the generic definition of this particular term, "reboot", will be utilized.

The reboot of a computer system can be performed utilizing a hard boot (with power-off and power-on sequence) or a soft boot (with no power-off and power-on sequence). Applicant's specification does not disclose what type of reboot is implemented as part of the claimed invention. After a review of definitions for the term "reboot" it was found that a power-off and power-on sequence in most situations can be part of a reboot procedure. If a reboot procedure includes a power-off and power-on sequence, then volatile memory is erased and there is no recoverable information for the data save kernel (executable) to save. Rebooting the processor clears the currently executing instruction sequence from the designated executing program (application executing under the control of an operational (executing) OS). And, the reboot procedure reloads a new instruction sequence (i.e. the data save kernel) for the processor to initiate executing instructions.

In addition, as part of the reboot procedure, volatile memory is erased when power is no longer supplied (during a power-off power-on sequence, if one is completed as part of the reboot procedure). This leads to the enablement problem with Applicant's invention. The invention cannot be implemented as claimed. If applicant feels that there is no enablement problem, please indicate the citations that prove a power-off and power-on sequence is definitely not completed as part of the reboot procedure for confirmation.

Prior art references discloses the save of volatile memory in the event of an abnormal condition (i.e. power failure, system crash). Prior art references discloses the reboot of a computer system after an abnormal condition (system crash).

Reboot Definitions:

With power-off and power-on sequence:

(<http://www.thefreedictionary.com/reboot>)

(<http://www.webopedia.com/TERM/R/reboot.html>)

(<http://www.allwords.com/word-reboot.html>)

([http://searchsmb.techtarget.com/sDefinition/0,,sid44\\_gci947403,00.html](http://searchsmb.techtarget.com/sDefinition/0,,sid44_gci947403,00.html))

(<http://www.yourdictionary.com/ahd/r/r0076750.html>)

Without no power-off and power-on sequence:

(<http://www.scala.com/definition/reboot.html>)

The majority or almost all definitions of the term "reboot" indicate a power-off and power-on sequence as a possible step in the reboot procedure. The general consensus appears to be that a reboot can involve a power-off and power-on sequence. This sequence is not excluded by the specification and the original claims. Therefore, this disclosure renders the term "reboot" in the specification indefinite. If applicant feels that there is no indefinite problem with term "reboot", please indicate the citations that state a definition for the term "reboot" for confirmation.

The examiner has considered the applicant's remarks concerning a data saving system and method that rapidly and deterministically saves data of a computer system. A boot control module detects a condition requiring a data saving operation, reboots the computer, and loads a data transfer kernel that supports a set of processes exclusively dedicated to saving data. Applicant's arguments have thus been fully analyzed and considered but they are not persuasive.

After an additional analysis of the applicant's invention, remarks, and a search of the available prior art, it was determined that the current set of prior art consisting of Backman (7,124,322) and Neuman (20030217299) discloses the applicant's invention.

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11/26/07